

THIS DISPOSITION
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THE TTAB

Mailed: September 14, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Kellogg Company
v.
General Mills, Inc.

Opposition No. 91125884
to Application No. 75945433
filed on February 25, 2000

Lisbeth Coakley of Harness, Dickey & Pierce for Kellogg
Company.

Joshua J. Burke, Esq. for General Mills, Inc.

Before Quinn, Walters and Holtzman, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Kellogg Company filed its opposition to the application
of General Mills, Inc. to register the mark CINNAMON TOAST
CRUNCH for "cereal derived ready-to-eat food bar," in
International Class 30.¹ The application includes a partial
claim of acquired distinctiveness, under Section 2(f) of the

¹ Application Serial No. 75945433, filed February 25, 2000, based upon
an allegation of a bona fide intention to use the mark in commerce in
connection with the identified goods.

Trademark Act, as to the phrase CINNAMON TOAST. The claim of acquired distinctiveness is based on the submission of a declaration including the following statements:

- Applicant is the owner of Registration Nos. 1,681,353 and 1,346,597. Registration No. 1,681,353, for the mark CINNAMON TOAST CRUNCH for "breakfast cereal," in International Class 30, issued March 31, 1992, and includes a disclaimer of CINNAMON TOAST apart from the mark as a whole. [Sections 8 (6 yr. & 10 yr) and 15 affidavits accepted and acknowledged respectively; renewed.] Registration No. 1,346,597, for the mark ^{Cinnamon}_{Toast}
Crunch for "breakfast cereal," in International Class 30, issued July 2, 1985, and includes a disclaimer of CINNAMON TOAST apart from the mark as a whole. [Sections 8 (6 yr.) and 15 affidavits accepted and acknowledged, respectively.]
- Applicant's mark CINNAMON TOAST CRUNCH for breakfast cereal has been in use for 16 years.
- Applicant's sales of CINNAMON TOAST CRUNCH brand breakfast cereal total more than \$650 million for the past five years; and its advertising expenditures related thereto for the same period are \$46 million.

As grounds for opposition, opposer asserts that applicant's mark is merely descriptive in connection with the identified goods, under Section 2(e)(1) of the Trademark Act.

Applicant, in its answer, denied the salient allegations of the claim.

The Record

The record consists of the pleadings and the file of the involved application. Neither party submitted any testimony or other evidence.² Both parties filed briefs on the case but a hearing was not requested.

Analysis

Opposer, in its brief, argues that applicant's claim under Section 2(f) of the Trademark Act is insufficient as a matter of law; and recites the basis for this allegation. Applicant, in its brief, argues that its Section 2(f) claim is legally sufficient and, further, states that it disputes "opposer's allegations that [opposer] has made use of terms including 'cinnamon' and 'cinnamon toast,' and that others in the same industry have used these terms"; and states that "[o]pposer provides no evidence or other support for these allegations[;] [o]pposer instead cites only to its own Notice of Opposition." (Applicant's Brief, p. 1.)

Applicant's statements correctly address the fact that opposer has failed to establish its standing, *i.e.*, that it has a real interest, in this proceeding. The standing question is an initial and basic inquiry made by the Board in every inter partes case; that is to say, standing is a threshold inquiry. This inquiry is directed solely to

² With its brief, opposer submitted a picture of the packaging used by applicant for the identified goods, noting that the mark is actually in use. Applicant expressly did not object to this evidence and acknowledged that its mark is in use.

establishing the personal interest of the plaintiff. The Federal Circuit has stated that an opposer need only show a personal interest in the outcome of the case beyond that of the general public. See *William B. Ritchie v. Orenthal James Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); *Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1385 (TTAB 1991).

In order to demonstrate a real interest in the proceeding, where the issue is whether a term is registrable under Sections 2(e)(1) and (f) of the Trademark Act, the party challenging the mark must allege a commercial interest in the term such that the party is at least in a position to use the term in its business activities. See, *Societe Civile des Domaines Dourthe Freres v. S.A. Consortium Vinicole de Bordeaux et de la Gironde*, 6 USPQ2d 1205 (TTAB 1988).

Opposer has provided no evidence in this proceeding as to what business it conducts, what products it may produce and sell, or that opposer or any other entities will be damaged by the registration of applicant's mark.³

³ Any facts that the Board Administrative Trademark Judges deciding this case may know personally about the business of opposer is irrelevant herein.

Because opposer has failed to establish its standing to bring this opposition, we do not address the issues raised under Sections 2(e)(1) and (f) of the Trademark Act.

Decision: The opposition is dismissed.